

MARC

ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION

MCCUSKER • ANSELM

ROSEN • CARVELLI

210 Park Avenue, Suite 301

Florham Park, New Jersey 07932

Tel: 973.635.6300 • Fax: 973.635.6363

www.marc-law.com

BRUCE S. ROSEN

Director

Direct: 973.457.0123

Fax: 973.457.0276

brosen@marc-law.com

March 27, 2014

VIA ECF & CERTIFIED MAILING, R.R.R.

Attn: Request for Waiver and Review of Decision

Telecommunications Access Policy Division

Wireline Competition Bureau

Federal Communications Commission

445 12th Street SW

Washington, DC 20554

Re: DA No.: 14-250

CC Docket No.: 02-6

File Nos. SLD-882704 et al.

**Application Nos.: 935749, 935750, 935751,
935769, 935770, 935771, and 935772**

Dear Sir/Madam:

This office represents the Elizabeth Board of Education (the "Board") with respect to the above-referenced matter. In accordance with CFR 47, Section 1.106, the Board respectfully requests the Federal Communications Commission ("Commission") Wireline Competition Bureau ("Bureau") reconsider its February 24, 2014 decision denying the Board's request for a waiver of the Commission Form 471 application deadline under the E-Rate program for Funding Year 2011-2012, application nos. 935771, 935772, 935769, 935769, 935770, 935750, and 93571 ("E-Rate Applications"). A copy of the Commission's February 24, 2014 Decision is attached to the Certification of Marvin Lehman dated March 24, 2014 ("Lehman Cert.") as Exhibit A. Also attached to the Lehman Certification, as Exhibit B, is a copy of the Board's January 30, 2014 waiver request.

As set forth more fully below, the timely filing of the E-Rate Applications was subverted and made impossible by a rogue former employee. As this was a circumstance beyond the Board's control and the Board took action to rectify the Applications' filing immediately upon its discovery, the Commission should find good cause exists to grant the Board waiver of the E-Rate Applications deadline.

Background

For several years now, the Board has filed E-Rate applications in a timely and efficient manner and has had its applications consistently approved. See Lehman Cert. at ¶ 4. In 2012, the Board was victim of a fraud perpetrated by a rogue employee, the Board's former Director of Technology, Susan Metlen. Id. at ¶¶ 5-11. Ms. Metlen was responsible for filing the E-Rate Applications. Id. at ¶ 5. Instead of doing so for the 2011-2012 funding year, she hid documents, including the E-Rate documents, in an attempt to harm and destroy the Board. Id. at ¶ 5-14.

Ms. Metlen went to great lengths in an attempt to commit fraud and harm to the Board and the students of the District. Id. Specifically, as more fully set forth in the Certification of Marvin Lehman, Ms. Metlen filed false charges against Board employees, hacked into Board computers, and deliberately attempted to misfile, hide and destroy documents related to business of the District. Id. As a result, it has taken the District considerable time and effort to resurrect files, find files and determine what has and has not been done. Id. at ¶ 14. As soon as the materials necessary to file the E-Rate Applications for the year in question were found among her work papers, they were submitted for filing and a waiver of the Applications' deadline was made. Id. at ¶ 14.

Discussion

The Commission has the authority to act on petitions requesting reconsideration of final actions taken pursuant to delegated authority. 47 C.F.R. § 1.106(a)(1); see also Requests for Waiver and Review of Decisions of the Universal Service Administrator by Allentown Public Library Suncook, New Hampshire et al. Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, DA 13-1701 (Wireline Comp. Bur. Aug. 2, 2013)(finding special circumstances to justify granting two petitions for reconsideration). "Section 1.106(c)(2) of the Commission's rules provides that a petition for reconsideration of an order may rely on facts not previously presented to the Commission if consideration of the facts relied on is required by the public interest." Id. at fn. 9. Additionally, the Commission may waive requirements of program rules for good cause and in the public interest. Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In doing so the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969); Northeast Cellular, 897 F.2d at 1166.

Public interest demands that given the particular facts of this matter the Decision should be reconsidered and the E-Rate filing deadlines waived. There is no evidence of waste, fraud, or abuse. See Lehman Cert. at ¶¶ 4-16. Ms. Metlen's misconduct in hiding the E-Rate documents and attempting to harm the Board, thus thwarting the timely filing of the E-Rate Applications, was a circumstance beyond the Board's control. Id. Furthermore, the Board acted promptly to remedy the former director's misconduct as soon the misconduct came to light. Id.

The loss of these funds will undeniably cause a hardship to this urban school district, which is already dealing with cuts in state aid. The Elizabeth Board of Education is the Number 1 Urban School District in the State of New Jersey with approximately 25,000 students. Id. at ¶ 15.

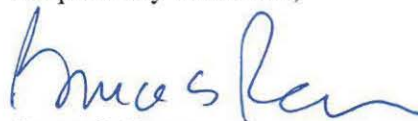
March 27, 2014

Technology is integrated part of the school experience in Elizabeth and the Board through the E-Rate program has been able to move this school district in a positive direction. Id. Unfortunately, the Board's ability to continue to service the students of this urban city is seriously jeopardized by the loss of the E-Rate funding for the period in question. Id. The total funding commitment requested in the E-Rate Applications at issue is approximately \$1,300,538. Id. at ¶ 16. Should the E-Rate funding not be provided for the funding year in question additional layoffs will likely be necessary as these resources are needed for the District to comply with the New Jersey Department of Education's requirement for standardized tests to be taken only on computers. Id. at ¶ 17.

Importantly, equity is called for in this situation because it would be fundamentally unfair if the schoolchildren in the District were penalized because of a rogue employee and despite the Board's efforts in taking prompt action to mitigate as best as possible the effects of these circumstances which were beyond its control. Id.

Because this petition has raised facts and special circumstances demonstrating good cause for waiver of the Commission's rules, and consideration of the facts newly presented is warranted as a matter of public interest, it is respectfully requested that the Commission grant the Board's request for reconsideration and waive the E-Rate Applications' filing deadlines.

Respectfully submitted,



Bruce S. Rosen

BSR/PEL

Encl.